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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/089,247

07/29/2002

Kenneth Michael Hall

1918-020512

3212

7590

06/02/2004

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700 Koppers Building
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EXAMINER

PRICE, CARL D

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/089,247	Applicant(s) HALL, KENNETH MICHAEL	
	Examiner CARL D. PRICE	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22 and 24-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22 and 24-42 is/are rejected.
- 7) ☒ Claim(s) 28-42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 22 and 24-42 have been considered but are moot in view of the new ground(s) of rejection.

Replacement sheets 1/7-7/7 drawings were received on 03-08-2004. These drawings are acceptable. However, the drawings continue to be objected to as failing to comply with 37 CFR 1.84(p)(4). See the objection to the drawings set forth herein below.

Certain claims continue to be rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. See the rejection of the claims under 35 U.S.C. 112, second paragraph set forth herein below.

In response to the previous prior art rejection under 35 USC 102 and 35 USC 103 applicant has amended claim 22 to include limitations not previously considered with respect to the prior art. For example, claim 22 now includes an insulating zone defined between inner and outer spaced walls an air inlet defined between spaced upper and a lower sections.

Regarding the claim as now amended applicant's attention is directed to the prior art reference of Cable (U.S. Patent No.- 3455233; newly cited) including an insulating air space (i.e. – “a dead air space”) between inner and outer sidewalls (see column 3, lines 15-20).

Contrary to applicant's remarks, on page 9, lines 19-23, amended claim 22 does not define over Gilbert. The combustion chamber (42; or 78,92) is defined by inner and outer walls (92,114; or 114,006; for example). Contrary to applicant's remarks, amended claim 22 does not "set forth that the combustion chamber has an insulating zone formed by inner and outer side wall of the combustion chamber. Claim 22 requires only that the combustion chamber has an inner side wall and an outer side wall spaced from one another "to define an insulating zone". The space, or combustion zone, interior of the spaced apart inner and outer walls of Gilbert defines an insulating zone in the same manner as that broadly recited in applicant's amended claim 22.

See the rejection of the claims based on prior art set forth herein below.

Drawings

Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "57" has been used to designate both an elongated upstanding portion (see figure 1) and the pop-rivet apertures (figures 8 and 9). Also, reference character "50" has been used to designate both the circular disk (see figure 1) and what appears to be pop-rivet apertures (figure 1). Applicant is encouraged to carefully review all of the drawing figures for possible additional informalities. A proposed drawing correction or corrected drawings are required in

reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 28-42 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. In particular, claim 28 recites "the combustion chamber includes holding means". It is noted however that claim 22 already recited includes a "dish for combustible material". It is noted applicant defines, on page 6, line 16, the "holding means in the form of a dish 28". Regarding the holding means claims 27- 42, therefore attempt to broaden rather narrow the invention with regard the previous claims. Also, in this regard the claim 28 should be deleted and, in claim 29, the phrase "in which the holding means is in the form of a metal dish" should be - - in which the dish is made from metal - -. And, claim 31 also fails to further limit the scope of the previous claimed invention, since the base (see page 6, lines 9-19 of the specification) is described as including an "outer sleeve or frame" in spaced relationship with a cylindrical heat reflective insert, the inner and outer side walls already being recited in independent claim 22. In this regard, the phrase "the base includes a frame" (claim 31) should be - - said outer side wall defines a frame - -. Additionally, applicant's attention is directed to

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similar informalities in claim 32 (e.g. – an air reservoir), claim 34 (e.g. – the lower section of the base includes a lower frame), claim 35 (e.g. – an air reservoir is defined between), claim 37 (e.g. – the base includes a heat reflective insert).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 28-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are vague and indefinite. In particular, claim 28 recites “the combustion chamber includes holding means”. It is noted however that claim 22 already recited includes a “dish for combustible material”. It is noted applicant defines, on page 6, line 16, the “holding means in the form of a dish 28”. Regarding the holding means claims 27- 42, therefore attempt to broaden rather narrow the invention with regard the previous claims. Also, in this regard the claim 28 should be deleted and, in claim 29, the phrase “in which the holding means is in the form of a metal dish” should be -- in which the dish is made from metal --. And, claim 31 also fails to further limit the scope of the previous claimed invention, since the base (see page 6, lines 9-19 of the specification) is described as including an “outer sleeve or frame” in spaced relationship with a cylindrical heat reflective insert, the inner and outer side walls already being recited in independent claim 22. In this regard, the phrase “the base includes a

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frame” (claim 31) should be - - said outer side wall defines a frame - -. Additionally, applicant’s attention is directed to similar informalities in claim 32 (e.g. – an air reservoir), claim 34 (e.g. – the lower section of the base includes a lower frame), claim 35 (e.g. – an air reservoir is defined between), claim 37 (e.g. – the base includes a heat reflective insert).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

he has abandoned the invention.

the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States.

the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Claim 22: rejected under 35 U.S.C. 102(b)

Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Cable (U.S. Patent No.- 3455233; newly cited).

Cable shows (figures 1-3) and discloses a charcoal cooking apparatus including, within a combustion space (11) of a base, a metal dish (10) spaced from the inner surface of an inner side wall which is spaced from an outer side wall (note: column 3, lines 15-19; “ ... these members is preferably formed from sheet-like material having opposed inner and outer surfaces maintained at a spaced distance with a dead air space therebetween ...”). The cooking apparatus includes an upper section (13,17) and a lower section (19) defining an inlet and air reservoir or space (e.g. – at “67”) there between. A hinged closure member (20) is supported on the base.

reflective foil surface (see column 3, lines 65-67).

Claims 22 and 23: rejected under 35 U.S.C. 102(b)

Claims 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilbert (U.S. Patent No. - 3322060)

Gilbert shows and discloses (figures 1-9) a cooking apparatus including a dish (42,54,56,64) spaced from inner sidewalls of a combustion chamber (78,92). The cooking apparatus includes a base having an upper section (104) and a lower section (102) with an air inlet (124) there between. An air reservoir (see all arrows indicating air flow about (42,54,56,64,78,92, etc.) is defined between the upper and lower base sections.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-41: rejected under 35 U.S.C. 103(a)

Claims 22 and 24-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert (U.S. Patent No. - 3322060) in view of Rast, Jr. (U.S. Patent No. - 3683791).

Gilbert shows and discloses (figures 1-9) a cooking apparatus including a dish (42,54,56,64) spaced from inner sidewalls of a combustion chamber (30,32,78,92). The cooking apparatus includes a base having an upper section (18,104,110) and a lower section (102) with an air inlet (124) there between. An air reservoir (see all arrows indicating air flow about (42,54,56,64,78,92, etc.) is defined between the upper and lower base sections. Gilbert includes glass fiber insulation on the interior surfaces of the upper and lower base portions. Gilbert however does not disclose a hinged closure member is supported on the base, to partially define the cooking chamber, and including an inner reflective foil surface.

Rast, Jr. shows and discloses (figure 8) a cooking apparatus including a dish (115 or 116) spaced from inner sidewalls of a combustion chamber (122). The cooking apparatus includes a base having an upper section (101,103) and a lower section (82) with an air inlet (76,77,80) there

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between. An air reservoir (at 101) is defined between the upper and lower base sections. A hinged closure member (10) is supported on the base, to partially define a cooking chamber, and includes an inner reflective foil surface (see column 3, lines 65-67), a plurality of vent apertures (66) and a handle (72), in view of the teaching of Rash, Jr.

In regard to claims 22 and 24-41, for the purpose of defining an enclosed cooking chamber (e.g. – an oven space) and to increase amount of heat directed onto food supported therein, it would have been obvious to a person having ordinary skill in the art to modify the base (18,104,110) of Gilbert to include a hinged domed closure member supported thereon wherein the closure includes an inner reflective foil surface, a plurality of vent apertures and a handle, in view of the teaching of Rash, Jr. In regard to claim 28, Gilbert, Jr. includes a holding means (50) in an opening of the combustion chamber which includes a plurality of air apertures (50). Also, in regard to claims 28, 30,32 and 41, for example, since the shape of the various elements forming the Gilbert cooking apparatus would necessarily depend on numerous design concerns such as the overall shape and size of the apparatus, desirable shipping weight and storage requirements, and aesthetic and other marketing concerns, etc., to make the dish and frame circular and cylindrical can be viewed a nothing more than a mere matter of choice in design absent the showing of any new or unexpected results there from over the prior art of record. In regard to claims 37 and 38, the metal insert (76,78,92), shaped to be received within the outer insulated upper base portion, is inherently reflective. In regard to claim 40, Gilbert includes a metal grid (140) received on the reflective insert (30,32,75,78,92).

Allowable Subject Matter

Claim 42 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is 703-308-1953. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703-308-1935. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Carl D. Price', with a stylized flourish at the end.

CARL D. PRICE
Primary Examiner
Art Unit 3749

AMENDMENTS TO THE DRAWINGS

The attached replacement sheets of drawings replace all of Figures 1-9. Also attached are marked-up Figures 1, 8 and 9 which identify the changes made in the corresponding replacement sheets. Changes made in marked-up Figures 1, 8 and 9 are highlighted for the Examiner's convenience.

Attachments: Replacement Sheets
Annotated Sheets Showing Changes

ALL ACCEPTED
ALL APPROVED
BY
EXAMINER.
5/26/04